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	UNITED STATES I	DISTRICT COURT
10	WESTERN DISTRICT	OF WASHINGTON
11	JAMES MCDONALD,	
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13	Plaintiff,	No. 2:10-cv-01952-RSL
14	v.	
15	ONEWEST BANK, FSB, NORTHWEST	DECLARATION OF JULIE R. VACURA
16	TRUSTEE SERVICES, INC., MORTGAGE	
17	ELECTRONIC REGISTRATION SYSTEMS, INC., INDYMAC BANK FSB, DOES 1-50,	
18	Defendants.	
19	Defendants.	
	L Iulia D. Vaguma, dealong on falloure.	
20	I, Julie R. Vacura, declare as follows:	
21	1. I am one of the attorneys represer	nting OneWest Bank, FSB ("OneWest") and
22	Mortgage Electronic Registration Systems, Inc. ("MERS") in this proceeding. I am competent
23	to make the statements in this declaration, and th	ey are based on my personal knowledge.
24	2. Attached as Exhibits A through D	, are true and correct copies of four documents
25	produced by OneWest to plaintiff on February 4,	, 2013.
26		

Case 2:10-cv-01952-RSL Document 224 Filed 02/06/13 Page 2 of 21

1	Pursuant	to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is
2	true and correct.	Executed on February 6, 2013, at Portland, Oregon.
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5		Julie R. Vacura
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Agreement with Respect to Servicing Transfer and Enforcement of Selling Representations and Warranties

This Agreement (the "Agreement") dated as of March 19, 2009, by and among Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Federal Deposit Insurance Corporation in its capacity as Receiver for IndyMac Bank, F.S.B. (the "Receiver"), the Federal Deposit Insurance Corporation in its capacity as Conservator for IndyMac Federal Bank, FSB (the "Conservator" or the "Bank") (with the Bank and Receiver sometimes jointly referred to as "Transferor") and OneWest Bank, FSB ("Transferoc").

RECITALS

WHEREAS, on July 11, 2008, IndyMac Bank, F.S.B. was closed by the Office of Thrift Supervision and the FDIC was appointed receiver. The Receiver subsequently transferred most of the assets and obligations of IndyMac Bank, F.S.B. to IndyMac Federal Bank, FSB, for which FDIC was appointed conservator. Included in the transfer was the responsibility to continue servicing mortgage loans owned by Freddie Mac, and previously serviced by IndyMac Bank, F.S.B. (the "Serviced Mortgage Loans"), to IndyMac Federal Bank, FSB, for which FDIC was appointed conservator; and

WHEREAS, the Conservator has entered into a letter of intent agreeing to sell to Transferee on March 19, 2009 (the "Closing Date") certain contract rights and obligations to service mortgage loans including the Serviced Mortgage Loans on behalf of Freddie Mac; such servicing contract rights arising under IndyMac Bank, F.S.B's rights under the Freddie Mac Single-Family Seller/Servicer Guide (the "Guide"); the Serviced Mortgage Loans involved are more fully summarized on Exhibit A attached hereto; and

WHEREAS, pursuant to the requirements of the Guide, Freddie Mac must consent to a transfer of servicing of the Serviced Mortgage Loans to the Transferee; and

WHEREAS, Freddie Mac has incurred losses and issued numerous repurchase requests based upon identified breaches of selling representations and warranties with respect to the Serviced Mortgage Loans; and

WHEREAS, Transferee requires confirmation that it will not be responsible for such repurchase obligations as they relate to the Serviced Mortgage Loans; and

WHEREAS, in order to induce Freddie Mac to consent to the transfer of servicing rights and to address Transferor's and Transferee's rights and obligations with respect to the Transfer, the parties have agreed to the terms set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, including Freddie Mac's consent to the transfer, the payment of funds to Freddie Mac, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

- 1. <u>Obligations and Liabilities Assumed by Transferce</u>. Pursuant to the terms of the Guide and except as otherwise set forth herein, in accordance with the Guide and related agreements upon the transfer of servicing of the the Serviced Mortgage Loans, Transferee becomes liable for, and assumes all servicer obligations under, the Guide as they relate to the Serviced Mortgage Loans as if Transferee had always serviced all such the Serviced Mortgage Loans.
- 2. Freddie Mac Consent to Transfer. Freddie Mac consents to the requested transfer of servicing of the Serviced Mortgage Loans, which consent is conditioned upon execution of this Agreement by all parties hereto, the Transferee's agreement to the terms of its approval as a Freddie Mac Seller/Servicer, and receipt by Freddie Mac of the Required Closing Payment. On the Closing Date, the transfer of servicing of the Serviced Mortgage Loans shall be effective and, except as specifically limited herein in Paragraph 3 hereof, all Freddie Mac requirements applicable to a transfer of servicing shall be applicable to Transferee as of that date.
- 3. Agreement to Limit Enforcement of Certain Remedies. Subject to the terms and conditions of this Agreement, Freddie Mac hereby agrees that it will not enforce against Transferee or Transferor any breaches of selling representations and warranties for the Serviced Mortgage Loans. With respect to loans that may be sold by Transferee to Freddie Mac, Transferee will be subject to all selling representations and warranties as set forth in the Guide. Notwithstanding the foregoing, Freddie Mac shall retain the right to pursue its claim filed with the Receiver pursuant to 12 U.S.C. § 1821.
- 4. Required Closing Payment. In exchange for the agreement set forth in Paragraph 3, within three (3) business days after the Closing Date, Transferor shall pay Freddie Mac by wire transfer an amount equal to the product of (i) the unpaid principal balance of the Serviced Mortgage Loans as of February 28, 2009and (ii) 44bps.
- 5. Rights to Pursue Third Parties. The FDIC retains its rights to pursue third party liability claims against various persons and entities it believes caused or may be liable for losses to it, Bank, and Indy Mac Bank, F.S.B. However, the FDIC recognizes that Freddie Mac may have independent rights to pursue claims, insurance, guaranties, litigation claims and actions against third parties, and to enforce any representations and

warranties made by third parties that relate to the Serviced Mortgages and has no objection to Freddie Mac's pursuit of such independent rights.

- 6. <u>Execution and Enforceability</u>. When this Agreement has been duly authorized, executed and delivered by the parties hereto, this Agreement will constitute the legal, valid and binding obligation of Transferor and Transferee, enforceable in accordance with its terms.
- 7. <u>Conflict with Law.</u> Neither the execution and delivery nor the performance by parties to this Agreement will result in any violation by the parties of, or be in conflict with, any provision of any applicable law or regulation, or any order, writ or decree of any court or governmental authority.
- 8. <u>Headings</u>. The headings and subheadings contained in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.
- 9. <u>Counterparts</u>. This Agreement may be executed in any number of counterparts and by the duly authorized representative of a different party hereto on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement. Executed documents may be delivered and exchanged by facsimile or other electronic means, but original documents shall be provided in due course.
- 10. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL LAW, BUT IF FEDERAL LAW DOES NOT PROVIDE A RULE OF DECISION IT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK (EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION). Nothing in this Agreement shall require any unlawful action or inaction by any party hereto.
- 11. Successors. All terms and conditions of this Agreement shall be binding on the successors and assigns of Freddic Mac, Transferor and Transferee. Except as otherwise specifically provided in this Agreement, nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than Freddie Mac, Transferor and Transferee any legal or equitable right, remedy or claim under or with respect to this Agreement or any provisions contained herein, it being the intention of the parties hereto that this Agreement, the obligations and statements of responsibilities hereunder, and all other conditions and provisions hereof are for the sole and exclusive benefit of Freddie Mac, Transferor and Transferee and for the benefit of no other person.
- 12. <u>Severability</u>. If any provision of this Agreement is declared invalid or unenforceable, then, to the extent possible, all of the remaining provisions of this

Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

- 13. <u>Survival of Covenants</u>. The covenants, representations, and warranties in this Agreement shall survive the execution of the Agreement.
- 14. Entire Agreement Amendment and Waiver. This Agreement contains the complete and entire understanding of the parties with respect to the matters covered and no change or amendment shall be valid unless it is made in writing and executed by the parties to this Agreement. No specific waiver of any of the terms of this Agreement shall be considered as a general waiver.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

Freddie Mac
By:
FDIC as Conservator for IndyMac Federal Bank, FSB and Receiver of IndyMac Bank, F.S.B. By:
Type Name: Title:
OneWest Bank, ESB By: Type Name: DAVID FAWEE.
Title: Franking High Persident

Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

- 13. <u>Survival of Covenants</u>. The covenants, representations, and warranties in this Agreement shall survive the execution of the Agreement.
- 14. Entire Agreement Amendment and Waiver. This Agreement contains the complete and entire understanding of the parties with respect to the matters covered and no change or amendment shall be valid unless it is made in writing and executed by the parties to this Agreement. No specific waiver of any of the terms of this Agreement shall be considered as a general waiver.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

Freddie Mac
By:
Type Name:
Title:
FDIC as Conservator for IndyMac Federal Bank, FSB and Receiver of IndyMac Bank, F.S.B. By: Alexander Type Name: George Alexander Title: Manager, Structured Transactions
OneWest Bank, FSB
By:
Type Name:
Title:

Mar-19-2009 02:35pm From-FW CRM

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- 14. Entire Agreement Amendment and Waiver. This Agreement contains the complete and entire understanding of the parties with respect to the matters covered and 10 change or amendment shall be valid unless it is made in writing and executed by the parties to this Agreement. No specific waiver of any of the terms of this Agreement shall be considered as a general waiver.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

Freddie Mac 3/19/DC) Type Name: Rand Rateliffe Title: VP Conterporty credit Risk moneyement
DIC as Conservator for IndyMac Federal Bank, FSB and Receiver of IndyMac Bank, S.B. 3y: Type Name: [title:
OneWest Bank, FSB 3y: Type Name: Title:

Exhibit A - Summary Identification of Mortgage Loans

The unpaid principal balance of the Serviced Mortgage Loans, as of February 28, 2009, was \$

LOAN LEVEL QUERY

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	<u>Loan #</u> 332479455			DDLPI 19 9/1/2009	Act Code	Act Date	Act Code	Act Date 2	Act Code	Act Date 3	Act Code Ac	t Date 4	Act Code 5	Act Date 5	Reason	Prop Con	Оссир	<u>Value</u>	BK Stat	LM Statu R	FC Stat
	332479455	1009111244	12/1/200	9/1/2009	AX	11/20/09	AW	11/20/09							016					R	Α
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	332479455	1009111244	2/1/201	0 9/1/2009	68	1/15/10	AX	1/15/10	43	12/29/09					006	04	03			R	Α
	332479455	1009111244	3/1/201	0 9/1/2009	71	5/21/10	43	12/29/09							006	04	03			R	Α
	332479455	1009111244	4/1/201	0 9/1/2009	71	5/21/10	AX	3/4/10	HD	3/2/10	43 12/	29/09			031	04	03			R	Α
	332479455	1009111244	5/3/2010	0 9/1/2009	74	4/23/10	74	2/28/10	43	12/29/09					031	04	03	312,816		R	Α
	332479455	1009111244	6/1/2010	0 9/1/2009	71	7/23/10	AX	5/17/10	43	12/29/09					006	04	03			R	Α
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	Loan#	Loan#	Rpt Date	DDLPI	Act Code	Act Date	Act Code	Act Date 2	Act Code	Act Date 3	Act Code Act Da	te 4 A	ct Code 5 Act Date 5	Reason	Prop Con	Оссир	Value	BK Stat	LM Statu	EC Stat
	332479455	1009111244	9/1/2011	9/1/2009	33	1/4/11								006	04	03			R	Α
	332479455	1009111244	10/3/2011	9/1/2009	33	1/4/11								006	04	03			R	Α
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	332479455	1009111244	1/3/2012	9/1/2009	33	1/4/11								006	04	03			R	Α
	332479455	100911124	2/1/2012	9/1/2009	33	1/4/11								006	04	03			R	Α
	332479455	1009111244	3/1/2012	9/1/2009	33	1/4/2011								006	04	03			R	A
	332479455	1009111244	4/2/2012	9/1/2009	33	1/4/2011								006	04	15			R	Α
	332479455	1009111244	5/1/2012	9/1/2009	H6	3/29/2012	H4	3/29/12	33	1/4/11				006	04	15			R	Α
Exhibit	332479455	1009111244	6/1/2012	9/1/2009	H6	5/10/2012	H4	5/10/2012	33	1/4/11				006	04	15			R	Α
bit E	332479455	1009111244	7/2/2012	9/1/2009	33	1/4/2011								006	04	15			R	Α
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	332479455	100911124	12/3/2012	9/1/2009	33	1/4/2011								006	04	15			R	Α
		100911124	1/2/2013	9/1/2009	33	1/4/2011								6	4	15			R	Α
		1009111244	2/1/2013	9/1/2009	33	1/4/2011								6	4	3			R	Α

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INDYMAC MORTAGE SERVICES FHLMC INDIVIDUAL LOAN ACCOUNTING DATA CROSS REFERENCE

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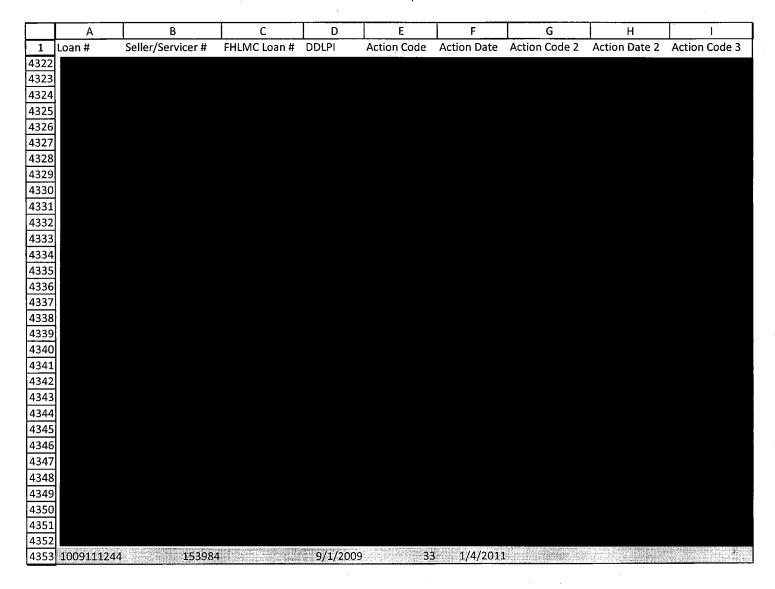
PAGE 263 NET YIELD REPORTING METHOD SELLER SERVICER 127721 INTEREST PRINCIPAL EXCP EXCP PREPAY FHLMC s/s INV/ LAST UNPAID LOAN NO LOAN NO CAT PD INT PRINCIPAL DUE DUE CODE DATE PENALTY Exhibit C, Page _ 으 389,481.60 1,825.70 332479455 1009111244 506/265 05-01-09 OWB/MCD 000059

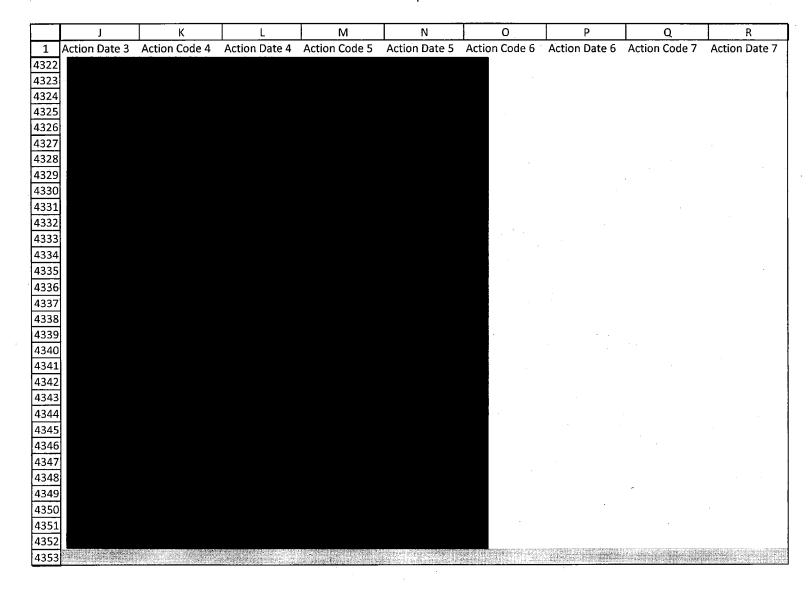
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INDYMAC MORTAGE SERVICES
FHLMC INDIVIDUAL LOAN RECONCILIATION REPORT

05/15/09 PAGE 1,699

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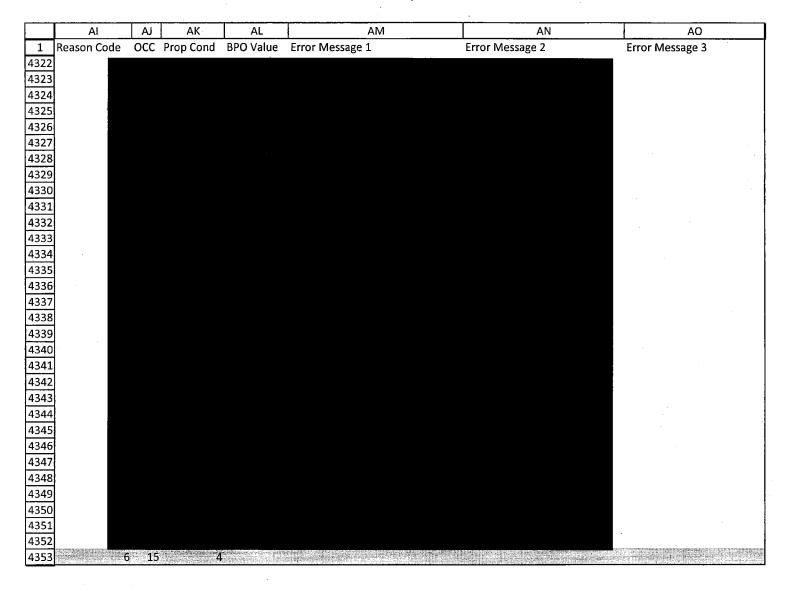




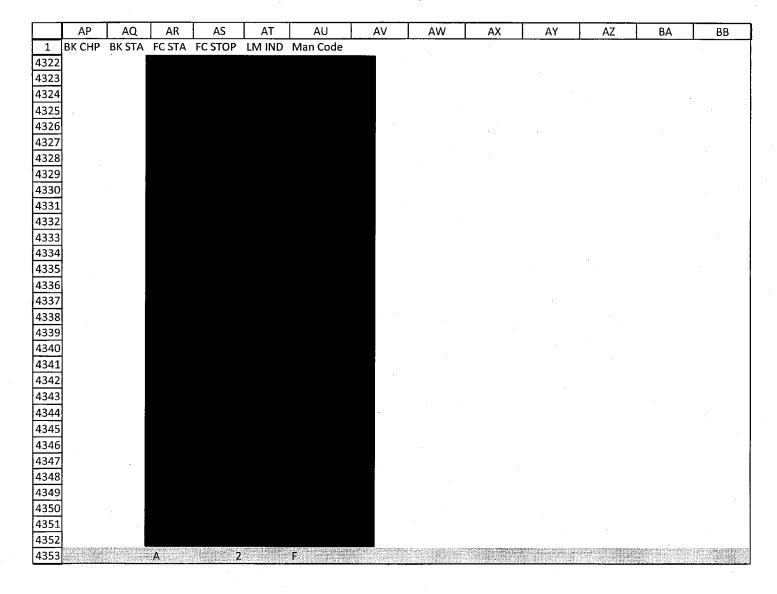
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FHLMC Final Report - 010213



Page 6 of 6

CERTIFICATE OF SERVICE

I am employed in Multnomah County, State of Oregon. I am over the age of 18 and am not a party to the within action; my business address is 621 SW Morrison St., Suite 1450, Portland, Oregon 97205.

On February 6, 2013, I served the following document(s) described as:

DECLARATION OF JULIE R. VACURA

on the party or parties listed on the following page(s) in the following manner(s): BY HAND DELIVERY: For each party, I caused a copy of the document(s) to be placed in a sealed envelope and caused such envelope to be delivered by messenger to the street address(es) indicated on the attached service list. **BY FEDERAL EXPRESS:** For each party, I caused a copy of the document(s) to be placed in a sealed envelope and caused such envelope to be delivered by Federal Express to the street address (es) indicated on the attached service list. **BY FIRST-CLASS MAIL:** For each party, I caused a copy of the document(s) to be placed in a sealed envelope and caused such envelope to be deposited in the United States mail at Portland, Oregon, with first-class postage thereon fully prepaid and addressed to the street address(es) indicated on the attached service list. BY FACSIMILE: For each party, I caused a copy of the document(s) to be sent by facsimile to the facsimile number(s) indicated on the attached service list. If this action is pending in Oregon state court, then printed confirmation of receipt of the facsimile generated by the transmitting machine is attached hereto. **BY E-MAIL:** For each party, I caused a copy of the document(s) to be sent by electronic mail to the e-mail address(es) indicated on the attached service list. If this action is pending in Oregon state court, then I received confirmation that the e-mail was received. \boxtimes BY ECF: For each party, I caused a copy of the document(s) to be sent by electronic mail via ECF to the e-mail address(es) indicated on the attached service list. I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct. /s/ Julie R. Vacura Julie R. Vacura

Ha Thu Dao <u>hadaojd@gmail.com</u> Attorney for Plaintiff